



STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064  
916 445-4982 • FAX 916 323-8765  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
Acting Member  
First District, San Francisco

BILL LEONARD  
Second District, Sacramento/Ontario

CLAUDE PARRISH  
Third District, Long Beach

JOHN CHIANG  
Fourth District, Los Angeles

STEVE WESTLY  
State Controller, Sacramento

RAMON J. HIRSIG  
Executive Director

August 2, 2005

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2005-5 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, September 2, 2005**. These may be sent by e-mail using the "Comments Form" on the Board's Web site ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
Assessment Policy and Standards Division  
ATTN: Annotation Coordinator  
P. O Box 942879  
Sacramento, CA 94279-0064

Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, they will be printed in Volume 3 of the Property Taxes Law Guide. At that time, the CLD becomes obsolete.

Copies of the backup correspondence are available by e-mail using the "Comments Form" on the Board's Web site ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2005-5

August 2, 2005

### 200.0300(b) BASE YEAR VALUE TRANSFER—GOVERNMENT ACQUISITION

~~200.0355 **Replacement Property.** Residentially-zoned property does not qualify as comparable replacement property for commercially-zoned property taken by eminent domain. The two properties are subject to different government restrictions (zoning) and are, therefore, of different utility. C 5/17/94; C 5/13/94.~~

*Delete – Amendment of Rule 462.500, effective December 18, 2004, changed the definition of utility to reflect usage, not zoning.*

### 220.0000 CHANGE IN OWNERSHIP

220.0372.005 **Life Estate.** Mother owned real property. At her death, the provisions of her will created a life estate in the property for her daughter. Upon termination of the life estate, the remainder interest would pass 50 percent to the daughter and 16.66 percent to each of the mother's three sons. After the mother's death, a parent-child claim for exclusion was properly filed thereby excluding the creation of the life estate in the daughter from change in ownership. Subsequently, the four siblings formed a corporation in which the four owned all the outstanding shares of the corporation. The daughter quitclaimed her life estate and her 50 percent remainder interest in the property to the corporation, and the three sons quitclaimed their remainder interests in the property to the corporation.

As the life tenant, the daughter was the primary owner of the entire property because a creation of a life estate meets the definition of change in ownership under Revenue and Taxation Code section 60. The three sons did not hold primary ownership interests in the property because they held future interests, not present interests, that vested upon termination of the life estate. Because the daughter owned a 100 percent interest prior to the transfer and a 50 percent interest after the transfer, the transfer to the corporation was not proportional and, thus, resulted in a 100 percent change in ownership. C 2/2/2005.

### 350.0000 DISABLED VETERANS' EXEMPTION

350.0009 **Household Income.** Federal laws and regulations provide for the rate of compensation paid to eligible survivors of a veteran because of a service-connected death. While the compensation paid monthly to the surviving spouse is increased for each dependent child, the law does not provide the dependent child with a separate entitlement to the additional benefits. Moreover, the statute and regulations that set forth the surviving spouse's benefits specify that the increased benefits are paid to the surviving spouse, even if the surviving spouse does not have actual or constructive custody of the minor child or the child is in active military service. Thus, the total amount of veterans' benefits paid to the unmarried surviving spouse, including the amount received for three

*Please note that the new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation*

dependent children, should be included in the calculation of household income for purposes of determining the appropriate property tax exemption allowed under Revenue and Taxation Code section 205.5. C 3/15/2005.

~~350.0015 **\$100,000 Exemption.** For 1985 and thereafter, the amount of exemption available to veterans or unmarried surviving spouses of veterans who qualify for the exemption as totally disabled is \$100,000, and there is no income limit for such claimants. The \$40,000 or \$60,000 (with income limits) exemptions remain in the law for claimants eligible for the exemption due to blindness or the loss of use of two or more limbs. However, the Veterans Administration makes no such distinction and defines veterans who are blind in both eyes or have lost the use of two or more limbs as totally disabled. Thus, virtually all claimants will be eligible for the \$100,000 exemption.~~

~~New claimants first filing in 1985 as totally disabled must file the claim form with the assessor by April 15, 1985 or the exemption cannot be allowed for 1985. In the case of the \$100,000 exemption, Revenue and Taxation Code Section 276 contains no provision for late filing. New claimants who file late and qualify for the exemption based on blindness or loss of use of limbs, but who do not qualify as totally disabled, are still eligible for the \$40,000 or \$60,000 exemption, and the late filing provisions of Section 276 apply. LTA 2/22/85 (No. 85/20).~~

*Delete – This annotation is obsolete due to subsequent legislation that changed the filing requirements, the exemption amounts, and the income limits.*

## **535.0000 LAND USE RESTRICTIONS**

~~535.0040 **Low Income Housing Projects.** Based on *Mission Housing Development Company v. City and County of San Francisco* (1997), 59 Cal.App.4th 55, and the 1986 enactment of the low income housing credit (LIHC) provisions in Internal Revenue Code section 42 together with the repeal of the previous (1) accelerated depreciation, (2) the 5 year amortization of rehabilitation expenses under Internal Revenue Code section 167(k), (3) the expensing of interest and taxes, and (4) the availability and benefits received from various deductions, the following conclusions may be drawn:~~

- ~~• Revenue and Taxation Code section 402.9 is *not* applicable to projects valued under Property Tax Rule 8 and the band of investment method of deriving the capitalization rate. Cash equivalency is relevant only to the comparable sales approach in Property Tax Rule 4.~~
- ~~• Section 402.9 is *not* applicable to projects with allocated LIHC under Internal Revenue Code section 42.~~
- ~~• Section 402.9 is *applicable* only to 236 projects *without* allocated LIHC under Internal Revenue Code section 42.~~
- ~~• Section 402.9 does not preclude the capitalization of all net benefits of *all* types of low income housing projects, including the benefits of LIHC, but Rule 8 requires it. C 7/17/98. (2000-1).~~

*Please note that the new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation*

*Delete – New legislation in effect January 1, 2005, added section 402.95 to the Revenue and Taxation Code to provide for low income housing projects. Also, see LTA 2005/044, Guidelines for the Assessment of Properties Financed Using Low-Income Housing Tax Credits.*

## **625.0000 PARENT-CHILD TRANSFER**

625.0251 Wills. Mother's will granted the executor the authority to sell real property and also granted broad discretion in distributing property in kind on a pro rata or non-pro rata basis. Following the decedent's death, the Superior Court specified the method by which distribution of her assets would occur. The court ordered the executor to sell three-fourths of the real property interests to one beneficiary and to distribute the proceeds of the sale to the other three beneficiaries. Since the court ordered this method of equalizing the real property shares to be distributed among the four children, the beneficiary's purchase of the property interests was not from his siblings. Thus, the parent-child exclusion would apply to exclude the entire value of the real property. C 3/10/2005.

## **840.0000 TIMBER YIELD TAX**

~~840.0140 Timber Owner.~~ The "first person" who acquires either the legal title or beneficial title to timber after it has been felled from land owned by a federal agency or any other person or agency exempt from property taxation means the first nonexempt person who acquires such title from an exempt person or agency, and such a person is the timber owner for purposes of the law.

~~"Felled or downed trees" encompasses timber which is no longer standing and which has been limbed and bucked (logs), not just severed timber, and such timber (logs) is subject to the tax. C 11/22/78.~~

*Delete – This is no longer an issue since the decision in Hoopa Valley Tribe v. Nevins (881 F.2d 657).*

## **880.0000 WELFARE EXEMPTION**

~~880.0125 Lease.~~ The granting of the exemption to property which is owned by one welfare-exempt organization but leased to another welfare-exempt organization is dependent, in part, upon the lease agreement.

~~Indicators of nonqualifying intentionally profit-making or commercial-in-nature leases include instances where:~~

- ~~1. The property was acquired by the welfare-exempt owner specifically for leasing to other welfare-exempt organizations, rather than for its own use.~~
- ~~2. The rent charged is greater than 10 percent over and above all operating costs. Operating costs include the cost needed to make the property available, that is, utility, maintenance, and/or repair costs incurred because of the use of the property by the lessee, and an amount necessary to cover the expense of depreciation based on cost of~~

~~replacement and amortization of, and interest on, indebtedness. LTA 2/9/79 (No. 79/30); C 2/22/79.~~

*Delete – We no longer require that the rent is less than 10 percent over operating costs.*

#### ~~880.0203 Owner and Operator.~~

- ~~1. Property leased to a welfare claimant is exempt if:~~
  - ~~a. The lessor is a governmental entity which receives exemption on property it owns. A public school district, as a political subdivision of the state, is a trustee of property, the beneficial ownership of which is in the state, and therefore receives exemption.~~
  - ~~b. The lessor is itself an organization qualified for the exemption, and the charge for use, no matter how denominated, is less than 10 percent over and above all operating costs. Operating costs include the cost needed to make the property available, that is, utility, maintenance, and/or repair costs incurred because of the use of the property by the lessee, and an amount necessary to cover the expense of depreciation based on cost of replacement and amortization of, and interest on, indebtedness.~~
- ~~2. Property leased to a welfare claimant is *not* exempt if the leased property is generally subject to tax in the hands of the lessor.~~
- ~~3. Property owned by a welfare claimant and leased to others is exempt if:~~
  - ~~a. The charge for use, no matter how denominated, is less than 10 percent over and above all operating costs.~~
  - ~~b. The user is exempt; and~~
  - ~~c. The use of the property is for exempt welfare purposes, i.e., the activity would be regarded as charitable, religious or hospital if engaged in by the owner claimant. C 6/28/76; C 7/27/76; LTA 2/9/79 (No. 79/30).~~

*Delete – We no longer require that the rent is less than 10 percent over operating costs.*

**880.0285 Tax Exempt Status.** Section 214.8 provides that exemption is available to an organization which has qualified as exempt from state franchise tax and federal income tax under Revenue and Taxation Code section 23701d and Internal Revenue Code section 501(c)(3). An organization that is exempt under section 23701f and IRC section 501(c)(4) does not qualify for property tax exemption under section 214.8. C 2/23/2005.